

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DAVID IVEY,

Petitioner,

V.

ROBERT HOUSTON,

Respondent.

CASE NO. 8:06CV702

ORDER

The matter before the Court is the Respondent's Motion to Dismiss (Filing No. 6) the Petitioner David Ivey's ("Ivey") petition under 28 U.S.C. § 2254 for writ of habeas corpus (Filing No. 1). Ivey, in his petition, asks this Court to vacate his conviction and sentence. Since the filing of his petition in this case, Ivey has filed another petition under 28 U.S.C. § 2254 for writ of habeas corpus (Case No. 8:06cv767, Filing No. 1), stating that he is being held past his prison release date pursuant to Nebraska's statutes providing for civil commitment of sex offenders (LB 1199). Ivey argues that LB 1199 was not enacted until after he was sentenced, and therefore cannot be applied to his sentence *ex post facto*. Ivey filed both petitions pro se, although an attorney has been appointed for him in the subsequently filed case. (Case No. 8:06cv767, Filing No. 8).

For case management reasons, I find that his two petitions should be joined in one action. Accordingly, I will dismiss his second-filed action, appoint an attorney in this case, and grant him leave to amend his petition. The Respondent's Motion to Dismiss will be denied without prejudice to reassertion after the Petitioner has had an opportunity to amend his petition.

IT IS ORDERED:

1. Brandie Fowler, the attorney previously appointed in Case No. 06cv767, is appointed to represent the petitioner in this matter, and Ms. Fowler shall enter an appearance and confer with the petitioner by mail or telephone within thirty (30) days of the date of this Order;
2. The Petitioner David Ivey is granted leave to file an Amended Petition, raising all claims he wishes to assert, within sixty (60) days of the filing of this Order; and
3. The Respondent's Motion to Dismiss (Filing No. 6) is denied without prejudice to reassertion after an Amended Petition is filed, or the expiration of sixty (60) days after the filing of this Order.

DATED this 16th day of July, 2007

BY THE COURT:

s/Laurie Smith Camp
United States District Judge